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METROPOLITAN AREA
COMMUNICATIONS COMMISSION

Cable TV Franchise Regulation • Telecommunications Policy and Support • Public Communications Network (PCN)

October 28, 1997

Mr. William Kennard
Chairman Designate
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

EX PARTE OR LATE FILED

RE: EX PARTE LETTER - CASES WT 97-197, MM DOCKET 97-182, AND DA 96-2140

Dear Chairman Kennard:

Please terminate all action in the above referenced cases; these cases would nationalize zoning decisions on cellular and broadcast towers applications. They would violate the intent of Congress and the important role played by local governments in local zoning cases. Congress and the courts have long recognized that zoning is a matter of peculiarly local concern. The FCC has no local zoning knowledge or expertise and is not accessible to most citizens. For these reasons and others, Congress expressly preserved local zoning authority over cellular towers in the 1996 Act.

Efforts to assume jurisdiction over any local zoning matter where RF radiation is mentioned is unacceptable. The FCC ignores the fact that localities cannot necessarily control the statements citizens make during meetings of our legislative bodies. Many municipalities, by state or local law, are required to allow citizens to speak on any topic they wish, even on items that are not on the agenda, this is part of what local government is all about. Some of our citizens may be concerned about radiation from cellular towers. For the reasons just described, we cannot necessarily prevent them from mentioning their concerns to us. The FCC's attempt to use this as a means to seize zoning authority and reverse local decisions violates their basic first amendment principles and the important role local governments play in this matter. This is particularly true if a municipality expressly says it is not considering such statements (that go beyond the radiation authority Congress left with municipalities) and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics. For similar reasons, the FCC cannot "second guess" the rationale for a municipality's decision. The FCC, like the courts, is bound by the stated reasons given by a municipality. Either these reasons are sufficient to uphold the decision or they are not.

The FCC's proposal to ban moratoria on cellular towers is objectionable for many of the reasons set forth above. It also fails to recognize that, for some municipalities, moratoria are a well recognized zoning tool, particularly while they revise zoning ordinances. More importantly, Congress took away the FCC's authority over cellular tower zoning and this includes moratoria.

Similarly, please terminate the FCC's proposed rulemaking preempting local zoning of broadcast towers. As you well know, broadcast towers can be many hundreds of feet in height and can clearly affect the character of neighborhoods in which they are constructed. It is, therefore, inappropriate that the FCC would propose that municipalities cannot consider the impact of such towers on property values, the environment, or aesthetics, even safety considerations would take second place under this regime.

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1815 NW 169TH PLACE, SUITE 6020 • BEAVERTON, OREGON 97006-4886 • (503) 645-7365 • FAX (503) 645-0999

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Setting artificial time limits for municipalities to act on environmental zoning and building permit approvals for such towers serves no useful purpose, and would be impossible to meet in Oregon as a result of our public notice requirements. It is inappropriate for the FCC to put these unrealistic time limits on municipalities to act on all local approvals, and then state that all such applications will be automatically deemed granted if we do not act within this timeframe, even if the application is incomplete or violates state or local law.

Please consider how the FCC would react if it was told that any broadcast license application would be automatically deemed granted unless the FCC acted on it within 21 to 45 days, that this rule applied whether or not the application was complete, whether or not the applicant was foreign, domestically owned, or otherwise qualified, or even whether the frequencies were available, and that the rule would apply without regard to whether the tower for the station was at the end of an airport runway, in a wetland, or in a historic district.

For these reasons please terminate all proceedings without taking the actions proposed therein. Thank you for considering our concerns.

Sincerely,



Bill Klappmeyer
Mayor, Lake Oswego

Chair, Metropolitan Area Communications Commission

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cc: (6 copies) - William F. Caton, Acting Secretary, Federal Communications Commission
Eileen Huggard, NATOA
MACC Commissioners

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